

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.34 of 1990

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Nageshwar Prasad @ Nageshar Pd Singh, son of Shri Mundrika Singh, resident of
village Ander, P.S. Gauri Chak, District Patna

.... Appellant

Versus

The State Of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae

For the Respondent/s : Mr. Shinush Ch. Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

and

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI


ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI)

Date: 22-06-2012

The sole appellant Nageshwar Prasad Singh, who has been found guilty for an offence punishable under section 302 of the Indian Penal Code and been directed to undergo R.I. for life by the 4th Addl. District and Sessions Judge, Patna vide his judgment dated 20th November, 1989 in connection with S.Tr.No. 781/1987, has preferred the instant appeal.

P.W.1 Mahendra Pratap Singh gave his Fard Beyan (Ext.2) on 18.4.1987 at about 4.30 P.M. before the A.S.I. of Gaurichak P.S. near the clinic of Dr. Deepak Ghosh at Sampatchak Bazar disclosing therein that on the same day at about 2 P.M. while his cousin brother, deceased Ram Singhasan Singh, was sleeping over Chowki in a Mango orchard south to his village, Nageshwar Prasad




Singh took advantageous decision and repeatedly given three garasa blow over his head. On hearing the sound “Bachao Bachao” by Ram Singhasan Singh he alongwith Ram Babu Singh (P.W.2), Suresh Singh (not examined), Ramadhar Singh (not examined) and others went there, whereupon they have seen Nageshwar Prasad Singh running away towards the southern eastern direction having blood stained Garasi in his hand. It has further been disclosed that just few days prior to the occurrence there was dispute amongst both the brothers over their joint family property.

On the basis of the aforesaid Fard Beyan Phulwari (Gaurichak) P.S.Case No. 121/1987 was registered under section 302 of the Indian Penal Code against the sole accused Nageshwar Prasad Singh and accordingly, investigation commenced and concluded by submission of the charge sheet, whereupon cognizance was taken and the case was committed to the court of sessions, whereafter the trial concluded in the manner as indicated above.


The defence case as is evident from the mode of cross-examination as well as from the statement recorded under section 313 Cr.P.C. is that the appellant/ convict is innocent and has fallen victim of mere suspicion. Neither any D.W. has been examined nor any document has been exhibited on his behalf.

While assailing the judgment of conviction and sentence



it has been submitted on behalf of the appellant that the learned lower court recorded the conviction and sentence contrary to the materials available on the record. It has further been submitted that none happens to an eye witness to the occurrence. He has further submitted that so far death of the deceased is concerned, there happens to be no controversy. The only fact remains whether there happens to be consistent material available on record to connect the appellant with the commission of occurrence and for that it has been suggested that the case as it stands is based upon circumstantial evidence. It has further been submitted that the remaining material witness P.W.1 and P.W.2 did not suggest only one conclusion regarding complicity of the appellant to be an assailant of the deceased. Therefore, the conclusion arrived at by the learned lower court appears to be cryptic one in the background of nature of evidence adduced on behalf of the prosecution.

On the other hand, the learned A.P.P. refuted the submission and submitted that from the evidence of the doctor P.W.4 it is evident that the deceased had died on account of injuries inflicted upon his person caused by sharp cutting weapon. P.W.3 happens to be the I.O. He had visited the place of occurrence and has seen the Chowki, over which the deceased was sleeping and had found copious blood beneath the Chowki. Not only this, he had also seized "Sujni"



from the Chowki having stained with blood. Therefore, causing of injury over the person of the deceased in an orchard over the Chowki is supported with the objective finding of fact with regard to complicity of the appellant. He fairly submitted that none is eye witness of the occurrence but the circumstance which the prosecution has led gives the only conclusion with regard to complicity of the appellant as a culprit and in the aforesaid background the finding recorded by the learned lower court appears to be just, legal and proper and is fit to be confirmed.

Before coming to analyze and scrutinize the evidence of P.Ws., it would be desirable to place the details of evidence led on behalf of the prosecution. Altogether 4 P.Ws. have been examined out of whom P.W.1 is the informant Mahendra Pratap Singh, P.W.2 happens to be Ram Babu Singh, his full brother, P.W.3 is the I.O. of this case, namely, Zafar Ali Khan and P.W.4 happens to be the doctor Chandershwar Prasad, who held postmortem over the person of the deceased. In likewise manner Ext.1 series happen to be signature over the Fard Beyan, Ext.2 the Fard Beyan, Ext.3 (wrongly numbered against the Fard Beyan), Ext.4 endorsement over the Fard Beyan, Ext.5 formal F.I.R., Ext.6 inquest report, Ext.7 seizure list and Ext.8 postmortem report.

Taking into account the submission led on behalf of rival

parties it is evident that cause of death by having ante mortem three injuries caused by sharp cutting weapon is not under challenge, that means to say the finding of the doctor on this score remains intact.

Now coming to the evidence of P.Ws. P.W.1 the informant had said that the occurrence is dated 18th April, 1987 at about 2 P.M. At that very time Ram Singhasan Singh, his cousin brother was sleeping in an orchard where he was murdered by his own brother Nageshwar Prasad Singh (accused). He had committed murder by means of Garasa. In paragraph 3 of his examination-in-chief he had disclosed that he had not seen the real occurrence. When he reached near from his pump house he heard the sound of alarm raised by the deceased Ram Singhasan Singh, then he rushed to the spot and found Nageshwar Prasad Singh running away with Garasa. Ram Babu Singh, Suresh Singh, Ramadhar Singh have also witnessed the same and with the help of the aforesaid persons he lifted the deceased to the hospital but in midst of way he succumbed to the injury. The police had come there. He had given his Fard Beyan and exhibited the same. Again he disclosed that he had not seen the real occurrence through his eye. During cross-examination, as it appears from paragraph 21 of his cross-examination he disclosed that he was proceeding towards his boring where pumping set had gone out of order. During course thereof he heard the sound of alarm. The villagers assembled and then

the deceased was lifted. At paragraph 24 he again reiterated that while he was proceeding towards tubewell, on alarm he moved and then saw the event. In paragraph 25 he had disclosed that when he reached at the P.O. he found the deceased conscious and was crying.

P.W.2 happens to be Ram Babu Singh, full brother of P.W.1, informant. In chief he had said that the occurrence is of dated 18.4.1987 at about 2 P.M. At that very time he was returning after seeing his field. During midst of way he heard sound “Bachao Bachao”. Over it he rushed to the P.O. and found Ram Singhasan Singh (deceased) in injured condition. He found Nageshwar Prasad Singh running away towards eastern southern direction. Then he had disclosed that others have also assembled. Then they lifted the deceased to hospital and in midst he succumbed to his injuries. In paragraph 5 of examination-in-chief he said that on the alleged date of occurrence he made statement before the police. In paragraph 6 of examination-in-Chief he had categorically stated that he had not made statement before the police that he had seen the accused running away having blood stained Garasi in his hand, even then this witness on this score was not declared hostile by the prosecution. In paragraph 13 he had again reiterated the same version. In paragraph 15 he had said that he had simply seen the accused fleeing away having no weapon in his hand. Thus, from the evidence available on record so adduced on

behalf of the prosecution it is evident that none of the witnesses have claimed themselves to be an eye witness to the occurrence. Therefore, as has rightly been argued it happens to be case based upon circumstantial evidence.

The case based upon the circumstance requires that there should be the only one hypothesis coming out from the evidence produced and available on record pointing towards guilt of the appellant. That means to say that link of chain should be interconnected in such a way that no other inference than that of guilt of the accused could be inferred thereupon. Taking into account the nature of evidence there happens to be inconsistency amongst P.W.1 as well as P.W.2. P.W.1 had disclosed that when he saw the accused while he was running away having blood stained Garasi in his hand. The aforesaid thing has been negatived by P.W.2. In paragraph 15 of his cross-examination he had categorically stated that he had seen the accused running away but having no weapon in his hand. At least this inconsistency persisting in the evidence of P.W.1 and P.W.2 makes the prosecution case not reliable to that extent whereupon one could infer that appellant was found moving from the place of occurrence having weapon of assault in his hand which could lead definite conclusion regarding appellant to be author of the crime. Hence, taking into account nature of evidence so available on the

record, it is found that the appellant is entitled for benefit of doubt.

Consequent thereupon the judgment of conviction and sentence recorded by the learned lower court is set aside. The appeal is allowed. The appellant is on bail. Hence, he is discharged from its liability.

(Mihir Kumar Jha,J.)

(Aditya Kumar Trivedi,J.)

Patna High Court
Dated 22nd June, 2012
N.A.F.R./Surendra